



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable W. J. Townsend
County Attorney
Lufkin, Texas

Dear Sir:

Opinion No. 9-8502
Re: Authority of County Attorney
to forfeit automobile under
the provisions of Section 42(b),
Article 1, Texas Liquor Con-
trol Act. (Art. 666-42(b),
V.A.F.C.)

Your recent opinion request to this department
reads as follows:

"An inspector for the Texas Liquor Control Board, arrested two employees of a local taxi cab owner and took from the automobile owned by said taxi cab owner and driven by said employees eight quarts of whiskey. Each party plead guilty to said charge of unlawful possession of liquor for the purpose of sale in a dry area. We are unable to show a guilty knowledge of the transaction on the part of the owner of the automobile, who was not present at the time of the seizure.

"May I lawfully institute a suit under the nuisance act, Sec. 42, subdivision (b) Art. 1 of the Texas Liquor Control Act, for a forfeiture to the State of the automobile, under the circumstances stated?"

We think your request reveals the use of an automobile for the transportation of an illicit beverage under the Texas Liquor Control Act. Sec. 44, Art. 1, of that Act (Art. 666-44, V.A.F.C.) specifically provides for forfeiture of an automobile under such conditions. The procedure outlined under this article differs in some material respects

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from that set out in Sec. 42(b) of the Act (Art. 666-42(b), V.A.P.C.) which does not name automobiles. The former provision allows replevy of an automobile pending the disposition of the criminal complaint, while Sec. 42(a) specifically prohibits the replevy of property seized thereunder. Furthermore there is a difference in the manner of sale of the forfeited property under the two articles..

Under the facts submitted it is our opinion that Sec. 44, being a specific provision governing the forfeiture of automobiles, controls Sec. 42(b) which is a general forfeiture provision. See 39 Tex. Jur. 212, Sec. 114.

It is therefore our view that you would not be warranted in filing a forfeiture suit under Sec. 42(b).

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Eugene Alvis*
Eugene Alvis
Assistant

APPROVED MAY 5, 1945
[Signature]
ATTORNEY GENERAL OF TEXAS

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